

**CURE OBJECTION DEADLINE: January 26, 2019 at 4:00 p.m.**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERNDISTRICT OF NEW YORK**

In re:

SEARS HOLDING CORPORATION, INC., *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**OBJECTION OF ASPEN REFRIGERANTS, INC. TO DEBTORS'  
NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
AND RESERVATION OF RIGHTS**

ASPEN Refrigerants, Inc. ("ASPEN"), by its undersigned counsel, Weltman & Moskowitz, LLP, as and for its objection to the "Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction ("Cure Notice") (ECF doc. no. 1731), filed by the above-captioned debtors and debtors-in-possession ("Debtors"), respectfully represents as follows:

**BACKGROUND**

1. On or about October 15, 2018, Debtors, including Kmart Holding Corporation ("Kmart"), filed voluntary petitions for bankruptcy relief pursuant to Chapter 11, Title 11, of the United States Code ("Bankruptcy Code"). Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. On November 19, 2018, this Court entered an Order Approving Global Bidding Procedures and Granting Related Relief (ECF No. 816), approving global bidding and sale

procedures, in connection with the sale or disposition of substantially all of Debtors' assets ("Assets"), among other relief.

3. On January 14, 2019, Debtors commenced an auction for the sale of the Assets ("Auction"). Debtors ultimately entered into an asset purchase agreement with the successful bidder for purchase of the acquired Assets.

4. In connection with the Auction and sale of Assets, ASPEN was served with the Cure Notice.

5. Schedule B to the Cure Notice at lines No. 848-850 thereof, references the contract between Sears Holding Management Corporation and ASPEN, dated November 1, 2012 (the "Contract") (referenced as Contract Number SHCLCW4031), and sets forth the Cure Amount in the sum of \$255,629.00 ("Cure Amount").

6. Pursuant to the Contract, and since November 1, 2012, ASPEN has been providing Debtors refrigerant and reclamation services to numerous Sears and Kmart locations which services included, supplying recovery cylinders, reclamation of refrigerant, storage and banking of refrigerant and buy-back of refrigerant.

7. ASPEN continues to provide refrigerant and reclamation services to Debtors.

8. Schedule B to the Cure Notice incorrectly sets forth the Cure Amount owed to ASPEN.

#### **OBJECTION AND RESERVATION OF RIGHTS**

9. In view of the foregoing, ASPEN objects to the Cure Amount.

10. According to ASPEN's records, the actual cure amount due under the Contract is \$392,424.94 for services rendered between December 2017 and January 2019. Offsetting said sum

by credits due Debtors in the amount of \$19,050.56, the actual balance due from Debtors is **\$373,374.38**. Thus, the correct cure amount is **\$373,374.38** (“Actual Cure Amount”).

11. In support of the above, annexed hereto as Exhibit “A,” is a detailed listing of all open invoicing from ASPEN to Debtors. Also annexed hereto as Exhibit “B,” is a detailed listing of all credits issued to Debtors by ASPEN.

12. To the extent charges continue to accrue due to continued delivery of goods and services to Debtors, ASPEN hereby reserves its right to amend its Actual Cure Amount up until the time the Contract is actually assigned to the buyer.

**WHEREFORE**, ASPEN Refrigerants, Inc., respectfully requests this Court require that any order authorizing the assumption of the Contract affirmatively require Debtors to pay Aspen no less than the Actual Cure Amount (**\$373,374.38**), plus any additional amounts incurred but not yet invoiced, and grant ASPEN such other and further relief as this Court deems just and proper under the circumstances.

Dated: New York, New York  
January 25, 2019

**WELTMAN & MOSKOWITZ, LLP**  
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